

# House Bills 5711-5716

## Sensible. Common Sense. *Sound* Environmental Policy for Agriculture

### What would House Bills 5711-5716 do?

The primary purpose of the legislation is to recognize Michigan farms that meet high environmental standards, motivate other farms to meet the same high standards and provide farmers with a clear set of environmental rules and regulations to follow.

### How would the legislation accomplish its purpose?

It would do the following:

1. Recognize in state statute the proactive environmental protection efforts of farms verified in the Michigan Agriculture Environmental Assurance Program (MAEAP).  
*Proactive:* Obtaining MAEAP verification is no cake walk. Farms that complete the program and vow to follow their environmental plans deserve to be presumed as good environmental stewards.  
*Enforcement:* Should a MAEAP-verified farm be found knowingly or recklessly harming the environment, the farm would be in violation of the Natural Resources Environmental Protection Act and penalized accordingly.
2. Give farms verified in the MAEAP Livestock System the option of documenting their comprehensive nutrient management plan (CNMP) with the Michigan Department of Agriculture (MDA).  
*Proactive:* The option would only apply to a MAEAP farm that has not had a regulated Department of Environmental Quality (DEQ) discharge within the last five years.  
*Enforcement:* If a MAEAP-verified livestock farm that is registered with MDA discharges, the farm would be removed from the MDA registry and forced to apply for coverage under a National Pollutant Discharge Elimination System permit.
3. Recognize that certain weather-related events are beyond even the best and most conscientious farmer's control.  
*Prevention:* A CNMP considers weather factors in detailing how, where and when manure and other nutrients should be applied to farmland to minimize environmental risks.  
*Enforcement:* Under the legislation, a producer whose farm is verified in the MAEAP Livestock System would not be found guilty of committing a precipitation-related discharge if — *and only if* — the producer was following his CNMP.
4. Direct the DEQ to condense all applicable environmental rules and laws affecting agriculture into one booklet.  
*Philosophy:* Michigan farmers have repeatedly said, "Just tell us what the rules are, and we'll follow them."  
*Reality:* DEQ interpretation of rules and laws can differ from one department to another. On top of that, DEQ rules and laws have changed three times within as many years in some cases. Farmers cannot run productive businesses with this type of regulatory uncertainty.

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# Misconceptions

## **The legislation only applies to a concentrated animal feeding operation (CAFO). **FALSE****

It's true that certain provisions apply exclusively to livestock, but others apply to all Michigan farms, from apple orchards to greenhouses and fields of cucumbers. Case in point is the provision that directs the state Department of Environmental Quality (DEQ) to condense all applicable environmental rules and laws affecting agriculture into one booklet.

## **The legislation will allow CAFOs to operate without meeting an environmental standard. **FALSE****

All CAFOs are required to operate under a certified comprehensive nutrient management plan (CNMP) by the end of 2007. This legislation does *not* change that requirement. All the legislation does is lay out two options for achieving the CNMP requirement — either through a National Pollutant Discharge Elimination System (NPDES) permit or verification in the Michigan Agriculture Environmental Assurance Program (MAEAP) Livestock System.

## **MAEAP verification cannot satisfy CAFO environmental regulations because MAEAP is a voluntary program. **FALSE****

MAEAP is a voluntary program for all Michigan farms *except* CAFOs, per se. CAFOs must implement a CNMP that is certified by a federally registered CNMP provider; they have no choice in the matter. They do, however, have a choice in how they meet that requirement.

Presently, a CAFO can have a CNMP documented through an NPDES permit or verification in the MAEAP Livestock System. The two alternatives exist as a result of an Environmental Council of States Regulatory Innovation Agreement between Michigan and the U.S. Environmental Protection Agency (EPA). The agreement recognizes MAEAP Livestock System verification as functionally equivalent to

an NPDES permit for the duration of the agreement.

The agreement aligns with federal proceedings, as the U.S. Court of Appeals ruled that EPA cannot require NPDES permits from farms based on the potential to pollute rather than verified discharges. This legislation merely attempts to give MAEAP state stature so that MAEAP verification is recognized long term as a functional equivalent to other environmental protection standards.

## **An NPDES permit provides more environmental protection than verification in the MAEAP Livestock System. **FALSE****

At the core of both an NPDES permit and verification in the MAEAP Livestock System is the development of a CNMP. The basic makeup of a CNMP is the same no matter whether the plan is recognized by an NPDES permit or MAEAP.

In actuality, verification in the MAEAP Livestock System requires producers to meet environmental standards beyond those required of an NPDES permit. A CNMP covered by an NPDES permit only has to address surface water risks. MAEAP verification requires that the CNMP address surface water risks as well as ground water risks, odor management, emergency action planning, employee training and much more. In addition, MAEAP re-verification is required every three years as opposed to the 5-year stretch between the issuance and renewal of an NPDES permit.

## **These bills take away DEQ's authority to enforce environmental laws on farms. **FALSE****

DEQ would remain the lead agency for enforcing environmental laws on farms that intentionally pollute or

# ALL

## Glossary

**CAFO** • CAFO is short for concentrated animal feeding operation. A CAFO is defined according to animal numbers and length of animal confinement. A large CAFO typically has more than 750 dairy cows, 2,500 swine or 1,000 head of beef cattle.

**CNMP** • CNMP stands for comprehensive nutrient management plan. A CNMP is a detailed plan of how a farm stores, handles and applies manure and other nutrients to meet the highest environmental safety standards and optimal production efficiency. A CNMP is unique to each individual farm because it considers factors such as geography, soil type, etc.

**MAEAP** • MAEAP stands for the Michigan Agriculture Environmental Assurance Program. The program helps farms of all sizes and commodities identify and prevent environmental risks, as well as comply with state and federal environmental regulations. It is a partnership developed and administered by a coalition of agriculture producers, commodity groups, state and federal agencies, and conservation and environmental groups.

# FALSE

do not comply with implemented conservation measures. The agriculture industry seeks to reward environmentally assured farms, but by no means does the industry condone intentional pollution or reckless disregard of environmental safeguards. This legislation creates incentives for MAEAP verification and strips MAEAP farms of these rewards if the farm is found in violation of a DEQ-enforced environmental regulation. Should the latter occur, the agriculture industry would support DEQ's enforcement actions.

## **This legislation shifts environmental regulation of farms from DEQ to MDA and grants MAEAP undue power. FALSE**

This legislation would not give MAEAP environmental protection authority, nor would it shift environmental regulation from one state department to another. DEQ would remain the lead agency for enforcing environmental laws on farms. MDA would remain the lead agency for verifying farms as environmentally assured under MAEAP, and MAEAP would continue to be staffed and housed within MDA. This legislation merely attempts to give MAEAP state stature so that the program is recognized long term as a functional equivalent to other environmental protection standards.

## **These bills dissuade and/or financially punish citizens for lodging environmental complaints against farms. FALSE**

No longer accepting anonymous complaints creates a more accountable system, enabling the DEQ to follow up on concerns of a complainant or provide details of the investigation.

The legislation would give the DEQ director the ability

to recoup investigation costs if — and only if — a complainant lodges more than two *unverified* complaints against the same farm within two years. The legislation does not *mandate* the director to recoup investigation costs. It simply gives the director that *option*.

Bottom line: The agriculture industry respects the important role citizen complaints play in the overall system for environmental protection. But we must be mindful of the costs associated with these investigations in terms of finances, labor and time. And we must not forget that citizen complaints are not the sole trigger for a DEQ investigation into a potential environmental violation on a farm. It's also important to note that since MAEAP was launched in 2000, there has not been a DEQ-regulated discharge from a MAEAP-verified farm.

## **The development of a booklet identifying environmental rules and laws of particular significance to agriculture will be a drain on DEQ resources. FALSE**

MAEAP-verified farms invest thousands of dollars in on-farm improvements to meet environmental standards. Compiling a "one-stop-shop" catalog of agriculture-related environmental regulations seems like a practical and reasonable request of the state agency charged with protecting the state's natural resources. Farmers are saying, "Provide us with clear direction, and we'll follow the rules." In the end, the action could save DEQ time and money spent interpreting regulations on farms and prove "priceless" for environmental protection of the state's natural resources in the long run.

## **These bills divert funds from Michigan's Clean Water Assistance Program and DEQ's Clean Michigan Initiative to MDA for use by CAFOs. FALSE**

Agricultural non-point source project funds are not exclusive to any specific farming operation. They are open to any farm in terms of size or commodity.

**MAEAP verified** • A farm that successfully completes the three phases of a Michigan Agriculture Environmental Assurance Program (MAEAP) system is deemed environmentally assured, or MAEAP verified. The three phases include education, on-farm assessment and third-party verification by the Michigan Department of Agriculture. A farm can become verified in any or all three MAEAP systems: Livestock, Cropping and Farmstead.

**NPDES Permit** • NPDES is short for National Pollutant Discharge Elimination System. The system is a program of the federal Clean Water Act to regulate discharges of pollutants from point sources to surface waters. Point source discharges are illegal unless authorized by an NPDES permit.

**NREPA** • NREPA is short for the Natural Resources Environmental Protection Act. In 1994, Michigan's environmental laws were codified into one statute, that being NREPA or Public Act 451 of 1994.

## What else would the legislation do?

It would assist the DEQ and MDA in investigating public complaints made against farms by requiring the complainant to provide his or her name. Currently the state departments accept anonymous complaints, providing no way for the departments to follow up on concerns of a complainant or provide details of the investigation. The legislation would also entitle the DEQ director, at his or her *discretion*, to recoup investigation costs if a complainant brings more than two *unverified* complaints against the same farm within two years.

Lastly, it would shift authority and management of Michigan Clean Water Assistance and Clean Michigan Initiative funds designated for non-point source environmental risks from the DEQ to MDA.

## Who does the legislation impact?

This legislation impacts all Michigan farms regardless of size or commodity. It also has indirect effects on supporting agribusinesses.

## Why is this legislation needed?

MAEAP's environmental reach extends well beyond CAFOs. The program applies to farms of all sizes and commodities through environmental risk assessments in the areas of livestock, farmstead and cropping, including orchards and nurseries.

As MAEAP is structured today, however, the program is not recognized in state statute. So unless a farm requires a CNMP and has that plan approved through MAEAP, there is no real legislative or legal value for a farm to achieve MAEAP verification. To become MAEAP verified, farms typically invest thousands of dollars in on-farm improvements. Producers want the security of knowing that their proactive efforts won't be made in vain.

In addition, there currently is no consistency or clear direction in DEQ's enforcement of environmental regulations on farms. Farmers are not trying to circumvent regulations. They just want to know what the rules are so they can plan accordingly. This legislation would provide farmers the regulatory stability they need to operate productive businesses, in turn maintaining agriculture's role as Michigan's second largest industry and freeing DEQ resources for other pressing matters.

## What are the consequences of not passing this legislation?

Without this legislation, MAEAP would only have true legislative value to CAFOs, which must, under current rules, implement a certified CNMP through MAEAP or an NPDES permit.

This legislation satisfies the environmental protection needs of CAFOs while also encouraging every other farm in Michigan to become environmentally assured.

CAFOs currently represent less than 1 percent of Michigan agriculture. Does the Legislature and Granholm administration want just a sliver of Michigan's agriculture industry involved with MAEAP or 100 percent of the industry?

Without this legislation, farmers will continue to struggle with regulatory uncertainty and be discouraged from making additional investments in agriculture, negatively impacting agriculture's \$60 billion contribution to the Michigan economy and the 1 million jobs the agri-food sector currently provides.

## For more information contact

- Scott Piggott, Agricultural Ecology Department Manager, (800) 292-2680, ext. 2021
- Ron Nelson, State Governmental Affairs Department Manager, (800) 292-2680, ext. 2043

